

APPEAL NO. 180046  
FILED FEBRUARY 20, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 5, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the respondent (claimant) sustained a compensable injury on (date of injury); and (2) the claimant had disability resulting from the claimed injury from August 22 through October 29, 2017. The appellant (carrier) appealed the ALJ's determinations. The claimant responded, urging affirmance of the ALJ's determinations.

**DECISION**

Affirmed as clarified.

The parties stipulated, in part, that the claimed date of injury is (date of injury). The claimant testified that he injured his right foot when he stepped on the threshold of a door.

**DISABILITY**

The ALJ is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. *Texas Employers Insurance Association v. Campos*, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). As an appellate reviewing tribunal, the Appeals Panel will not disturb challenged factual findings of an ALJ absent legal error, unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660 (1951). The ALJ's determination that the claimant had disability from August 22 through October 29, 2017, is supported by sufficient evidence and is affirmed.

**COMPENSABLE INJURY**

The ALJ noted in the Discussion portion of the decision that the evidence established the claimant stepped on an uneven surface which resulted in damage and harm to the physical structure of his body in the form of a fracture of the fifth metatarsal of his right foot. The ALJ found that the claimant sustained damage and harm to the physical structure of his body while in the course and scope of employment on (date of injury), and determined that the claimant sustained a compensable injury on (date of injury). The evidence supports the ALJ's determination.

The ALJ stated in the Discussion that “[w]hile [the] [c]arrier’s argument that an injury sustained from merely walking is not compensable is correct. . . .” In Appeals Panel Decision 070284-s, decided April 20, 2007, the claimant was walking to a work meeting on the employer’s premises when she experienced a pop in her right knee, and was diagnosed with a right knee strain and a tear of the calf muscle. The ALJ in that case determined that the claimant did not sustain a compensable injury because the evidence established that the mechanism of injury was simply walking. The Appeals Panel reversed and rendered a decision that the claimant did sustain a compensable injury. The Appeals Panel noted that the injury both occurred in the course and scope of employment and arose from the employment. The Appeals Panel stated that it was not necessary for the claimant to prove that a pivot, twist, turn, or other type of untoward body motion occurred while walking to the work-related meeting to establish that the injury arose from the employment.

In the case on appeal the ALJ made clear that she did not base her decision on the carrier’s argument that injuries occurring from merely walking are not compensable. However, a written decision is being issued to clarify that the ALJ’s statement that an injury sustained from merely walking is not compensable is not a correct statement of law.

## **SUMMARY**

We affirm the ALJ’s determination that the claimant sustained a compensable injury on (date of injury).

We affirm the ALJ’s determination that the claimant had disability from August 22 through October 29, 2017.

The true corporate name of the insurance carrier is **AMERICAN ZURICH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3232.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge